



THE ATTORNEY GENERAL OF TEXAS

GERALD C. MANN

AUSTIN 11, TEXAS

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ATTORNEY GENERAL

Honorable L. D. Hartwell
County Attorney, Hunt County
Greenville, Texas

Dear Sir:

Opinion No. 0-2529

Re: Payment of city poll tax as pre-
requisite to voting; discrimina-
tion as to sex.

We acknowledge receipt of your inquiry recently sub-
mitted from which we quote:

"The City of Wolfe City in Hunt County, Texas, through its officials, have published a statement that the male population residing in that city will be required to present a city poll tax before they will be permitted to vote in a county primary election to be held on July 27th and further declares that this rule shall not apply to female voters. This is a new rule published by the City Council.

"I would like a ruling of the Attorney General's Office as to whether the election judges may permit female voters to vote in a county primary election in the Wolfe City box without having paid a city poll tax, and at the same time prohibit the male voters to vote in the same election without having paid the city poll tax."

It is well settled that cities may levy and collect an annual poll tax. Article 1030, Revised Civil Statutes:

"The City Council shall have power to levy and collect an annual poll tax, not to exceed One (\$1.00) Dollar of every inhabitant of said city over the age of twenty-one (21) and under sixty (60) years, those persons exempt by law from paying the State Poll Tax excepted, who is a resident thereof at the time of such annual assessment." (Emphasis ours)

Article 2955, Revised Civil Statutes, reads in part as follows:

"Every person subject to none of the foregoing disqualifications * * * shall be deemed a qualified elector * * *; provided that any voter who is subject to pay a poll tax under the laws of this State or ordinances of any city or town in this State, shall have paid said tax before offering to vote in any election in this State and holds a receipt showing that said poll tax was paid before the first day of February next preceding such election * * *"

Our Opinion No. 0-969, approved June 21, 1939, holds that the two articles just quoted, when considered together, disqualify all voters in all elections who fail to pay their city poll taxes in the manner and within the time provided by law. See *Powell v. City of Baird*, Civ. App., 127 S.W. (2d) 206; *Ibid*, Supreme Court, 128 S.W. (2d) 786.

From your letter, however, it appears the City Council of Wolfe City has decreed (by ordinance, we presume) that only male voters shall be required to present a city poll tax receipt in order to vote in the July primary, whereas female voters may vote in such election without having paid such tax.

Prior to the adoption of the Nineteenth Amendment to the Federal Constitution providing that "the right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex;" Article 1030, R.C.S., *supra*, read as follows:

"The City Council shall have power to levy and collect an annual poll tax, not to exceed one dollar, of every male inhabitant of said city over the age of twenty-one and under sixty years, etc."
(Emphasis ours)

The statute was amended by the Forty-second Legislature (Acts 1931, 42nd Leg., p. 377, Ch. 223, §1), the words "of every inhabitant of said city" being substituted for "of every male inhabitant of said city." The intent of the Legislature is thus obvious, without resort to construction; any argument or contention to the contrary being entirely dispelled by reading the emergency clause of the amendatory Act: "The fact that under the present law only male inhabitants of cities are subject to poll tax creates an emergency, etc."

You are therefore advised that the City Council of

Wolfe City may not legally require a city poll tax of male persons as a condition precedent to the privilege of suffrage, while granting the ballot to female voters not otherwise exempt, who do not pay the tax.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By s/Benjamin Woodall
Benjamin Woodall
Assistant

BW:EP:wc

APPROVED JULY 15, 1940
s/Grover Sellers
ATTORNEY GENERAL

Approved Opinion Committee By s/BWB Chairman